

PT 01-51

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

ST. CLAIR ASSOCIATED)	Parcel Index #	08-22-0-102-062
VOCATIONAL ENTERPRISES)		
Applicant)	A.H. Docket #	99-PT-0064
)	Docket #	99-82-104
v.)		
)		
)	Barbara S. Rowe	
THE DEPARTMENT OF REVENUE)	Administrative Law Judge	
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Ralph T. Senger, Law Offices of Ralph T. Senger, for St. Clair Associated Vocational Enterprises, Inc.

Synopsis:

The hearing in this matter was held at the Illinois State Office Complex, 1100 Eastport Plaza Drive, Collinsville, Illinois on November 3, 2000, to determine whether or not St. Clair County Parcel Index No. 08-22-0-102-062 qualified for exemption during the 1999-assessment year.

Randy Law, Executive Director of St. Clair Associated Vocational Enterprise, (hereinafter referred to as the "Applicant" or "S.A.V.E.") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1999-assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether the parcel was used by the applicant for exempt purposes during the 1999-assessment year. After a thorough review of the facts and law presented, it is my

recommendation that the partial exemption at issue be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

Findings of Fact:

1. The jurisdiction and position of the Department that 15% of St. Clair County Parcel Index No. 08-22-0-102-062 did not qualify for a property tax exemption for the 1999-assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 6)

2. The applicant acquired the subject parcel by warranty deeds and a quitclaim deed dated April 30, 1998. (Dept. Ex. No. 1)

3. Located on the subject property is applicant's training workshop, which is used to provide developmental employment training to disabled adults. The subject parcel contains 2.75 acres of which 15% is leased to the City of Belleville to create a municipal parking lot. (Dept. Ex. No. 1)

4. The frontage of the subject parcel has been leased to the City of Belleville for \$10.00¹ for a period of 20 years. (Dept. Ex. No. 1)

5. S.A.V.E. desired to finance the purchase of the subject parcel by the sale of tax-exempt bonds issued by the Illinois Development Finance Authority. Pursuant to the Illinois Development Finance Authority Act (20 ILCS 3505/1, *et seq.*) §6.1 the city must notify the authority if it disapproves or approves of the project prior to the issuance of the bonds. (Dept. Ex. No. 1; Tr. pp. 8-11)

6. The tax-exempt bonds generated the source of funds for the purchase of the subject parcel. One of the requirements of the tax-exempt bond at issue was that the local municipality must approve the purchase and remodeling of the property. The city agreed to

¹ The protest letter stated that the rent for the leased property is \$10.00 per year. However, the plain language of the agreement states that the rent for the term of the agreement is \$10.00. The applicant asserts that the city has not paid the applicant the \$10.00 (Tr. pp. 12-13), but the lease states that the receipt of the \$10.00 is hereby acknowledged to be "in hand paid". (Dept. Ex. No. 1)

approve the bond issue if the applicant would make available to the city a portion of the parking lot, and if at some time there became a need to widen North Illinois Street, that the applicant would agree to let the city use some of the subject property for that purpose. (Tr. pp. 8-13)

7. On March 16, 1998, Ordinance No. 5861 was passed by the City Council of Belleville, which authorized the Mayor and City Clerk to enter into a Public Parking Lot Lease and Future Development Agreement (hereinafter referred to as the "Agreement") with S.A.V.E. The mayor approved the ordinance on March 23, 1998. (Dept. Ex. No. 1)

8. On March 13, 1998, resolution 98-03 was adopted at a special meeting of the executive committee of the board of directors of the applicant. The resolution authorizes S.A.V.E. to enter into the agreement with the city of Belleville (hereinafter referred to as the "City") if S.A.V.E. becomes the owner of the property known as 620 North Illinois Street. (Dept. Ex. No. 1)

9. On March 16, 1998, the city and applicant executed the agreement. (Dept. Ex. No. 1)

10. The subject parcel is located in an area known as the North Illinois Street Redevelopment Corridor and is included in prior and current redevelopment plans by the city. Prior to applicant's acquisition of the property, the city had spent \$25,000 on the redevelopment corridor. There was some opposition by the city counsel to the purchase of the subject property by the applicant because of a perceived conflict with the redevelopment corridor plans. In order for the city to enhance the ultimate implementation of the redevelopment of North Illinois Street (a/k/a Highway 159), the parties agreed S.A.V.E. would lease 15% of the subject premises to the city. The leased premises shall be used by the city for the development and management of green-space and a parking lot for the general public use and benefit. (Dept. Ex. No. 1; Tr. pp. 9-11, 26)

11. The provisions of the agreement state that applicant is responsible for the development of a 20-foot wide strip of green-space and parking on the leased premises. The green-space shall be used as a planting bed for landscape trees and shrubbery that will be

furnished by the city's parks and recreation department. The agreement also provides that the north curb cut on north Illinois street on the western line of the property shall be closed and a curb line constructed which is compatible with the existing type and kind of curb now present. (Dept. Ex. No. 1)

12. The agreement also provides that the city may, at its cost and option, install parking meters, signage, and green-space fixtures. All permanent improvements made to the leased premises immediately become the property of the applicant. The city is responsible for the cost of utilities, insurance, litter clean up, and maintenance of the leased property. (Dept. Ex. No. 1)

13. Subsequent to the purchase of the property, and pursuant to the agreement, 20 feet were made into green-space. In the summer of 1999 shrubbery and trees were planted on that green-space. There was a shift in the location of the actual parking lot from the north of the property to the south. The applicant paved the parking lot section of the parcel in question in 1999. (Applicant's Ex. Nos. 5,7; Tr. pp. 14-18, 30)

14. The applicant and its staff parked on the non-green-space portion of the leased property in 1999. (Applicant's Ex. No. 6; Tr. pp. 18-22)

15. I take administrative notice of the fact that the Department has found the applicant to be an exempt organization because it was granted a partial exemption for the subject property. (Dept. Ex. No. 1)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, . . .

In addition the statutes provide for exemptions for parking lots used in conjunction with exempt properties. The statutory provision found at 35 **ILCS** 200/15-125 exempts certain property from taxation in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the

exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

The issue in this case is whether the applicant used the 15% of the subject parcel at issue for exempt purposes in 1999. The applicant leased 15% of St. Clair Parcel index No. 08-22-0-102-062 to the City of Belleville for \$10.00 for twenty years. The intent of the city was to use the area for beautification and as a metered parking area. The applicant asserts that this was not a lease for profit situation. In Turnverein "Lincoln" v. Bd of Appeals, 358 Ill. 135 (1934), the Illinois Supreme Court, citing People v. Withers Home, 312 Ill. 136, stated "that if property, however owned, is let for return, it is used for profit and so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss." *Id.* at 144 . See also Salvation Army v. Dep't of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988) (*leave to appeal denied*) and City of Mattoon v. Graham, 386 Ill. 180 (1944).

Although it was asserted that the city did not install parking meters, signage, or any other identification² to show that the designated area is leased to the city, that assertion is not verified by the pictures or testimony. The applicant parked on the property in 1999. The property was leased in 1999. The applicant acted upon the terms of the lease by establishing the green-space, shifting the location of and paving the parking lot. The city acted upon the terms of the lease by furnishing trees and shrubbery. Under the terms of the lease the city is responsible for the maintenance of the property. There was no indication that the city did not carry the mandated \$1,000,000 general liability insurance coverage on the property in question as described in the agreement.

² The witness for the applicant was Randy Law, Executive Director of S.A.V.E, who has a vested interest in obtaining the exemption. He testified that in 1999 that the city did not announce that there was public parking on the premises. However in response to the next question: "Has there ever been a sign on the premises stating that there is public parking that's available on this spot?" he answered: "No, there is not -- or was not at the time." (Tr. pp. 20-21) It is therefore unclear whether the city has in fact placed signs indicating that there is public parking available. It is also noted that the applicant submitted selected pictures of the entire parking area. Those pictures did not totally and clearly depict the parking area at issue; and therefore, do not clearly show that there were no signs or parking meters on the leased premises at the time of the hearing.

In The Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983), the court addressed facts that are similar to the ones before me. The village leased a parking lot from the First Presbyterian Church of Oak Park for use as a municipal parking lot. The church used the parking lot in conjunction with its religious activities from 9:00 a.m. to 10:00 p.m. on Sundays. During the balance of the week, the village used the area as a municipal parking lot. The court found that the lease and use by the village, a municipality, meant that the property did not qualify for a property tax exemption. The court distinguished the facts found in Childrens Development Center v. Olson, 52 Ill.2d 332 (1972), another case involving a lease situation which did qualify for exemption, from the ones in Village of Oak Park. In Village of Oak Park the lease was from a religious organization to a municipality. In Childrens Development Center the lease was from a religious organization to a charitable organization. In distinguishing Childrens Development Center, the court stated:

In *Childrens Development Center*, the lessee came within section 19.7³ of the Revenue Act of 1939 (Ill. Rev. Stat. 1981, ch. 120, par. 500.7), which exempts from taxation all property "actually and exclusively used for * * * charitable or beneficent purposes and not leased or otherwise used with a view to profit." The section 19.7 exemption, like that in section 19.2⁴ for religious institutions, turns on the primary use of the property. Unlike those provisions, the exemption provided for municipalities **turns solely on ownership of the property**. Section 19.6⁵ of the Revenue Act of 1939 provides in relevant part for exemption of "all property owned by any city or village located within the incorporated limits thereof, except such as heretofore has been leased or may hereafter be leased by such city or village to lessees who are bound under the terms of the lease to pay the taxes on such property." (Ill. Rev. Stat. 1981, ch. 120, par. 500.6) That use of leased land for municipal purposes does not provide an exemption is evident from People ex rel. Carr v. City of Chicago 1926) 323 Ill. 68, 153 N.E. 725. There, the city leased land which was used for public playgrounds, police department, a fire station, and a hospital. Although all of the land served municipal purposes, the Supreme Court held that it was ownership, not use, which determined exemption. It appears, then, that there is no separate exemption of land used for municipal purposes, as plaintiffs contend. If we were to adopt plaintiff's position, we would add to section 19.6 of the Revenue Act of

³ Currently found at 35 ILCS 200/15-65.

⁴ Currently found at 35 ILCS 200/15-40.

⁵ Currently found at 35 ILCS 200/15-60.

1939 an exemption clearly not within its contemplation. Therefore, we believe that *Childrens Development Center* is inapplicable to the situation before us and that plaintiffs have failed to demonstrate any facts which would bring the property within a statutory exemption from taxation. (*Id.* at 501-502) (emphasis added)

The applicant herein also asserts that the scenario before me is similar to the one in Children's Development Center v. Olson, *supra*. To the contrary, the facts here are essentially the same as those in Village of Oak Park. Therefore, the reasoning set forth by that court controls this matter.

For the foregoing reasons, it is recommended that the 15% of the subject parcel leased to the city remain on the tax rolls for the 1999-assessment years.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
August 8, 2001